California State
Board *of* Equalization

Legislative Bill Analysis

Legislative and Research Division

Assembly Bill 88 (Gomez)
Date: Introduced
Program: Sales and Use Tax
Sponsor: Appliance Recycling Centers of America
Revenue and Taxation Code Section 6371.5
Effective: Immediately upon enactment

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Summary: Provides a sales and use tax exemption for a public utility's energy and water efficient home appliance purchases that are provided at no cost to low-income participants in an energy efficiency program.

Purpose: To eliminate the tax imposed on the utility company's purchase of these energy saving appliances, as the addition of tax decreases the available funds dedicated to replace them.

Fiscal Impact Summary: Annual state and local revenue loss of $12.8 million.

Existing Law: Except where the law provides a specific exemption or exclusion, California's Sales and Use Tax Law[1] imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer. Under the law, tax does not apply to tangible personal property sold to retailers or other sellers who resell the property before they make a taxable use of the property.

Current law imposes the sales or use tax on energy efficient appliance sales and purchases to the same extent as it imposes the tax on any other tangible personal property sales not otherwise statutorily exempted or excluded from tax. While the law statutorily exempts tangible personal property sales to the United States government, current law contains no statutory exclusion or exemption merely because the purchaser is a utility company or a local government agency. Therefore, unless a utility company purchases tangible personal property, such as appliances, for purposes of reselling that property prior to making a taxable use of the property, tax applies to the property's sale to the utility company.

California's sales and use tax rates. Since January 1, 2013, a statewide 7.5% sales and use tax rate applies to tangible personal property sales and purchases. The following table shows California's various sales and use tax rate components (the table excludes voter-approved city and county district taxes, which range from 0.1% to 2.5%):

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes (Revenue and Taxation Code (RTC) Sections 6051, 6051.3, 6201, and 6201.3)
1.0625%	Local Revenue Fund 2011	Realignment of local public safety services (RTC Sections 6051.15 and 6201.15)
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds (RTC Sections 6051.5 and 6201.5)
0.25%	State (Education Protection Account)	Until 01/01/17, schools and community college funding (Section 36, Article XIII, State Constitution)

1 Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code (RTC).

Rate	Jurisdiction	Purpose/Authority
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)
1.00%	Local (City/County) 0.75% City and County 0.25% County	City and county general operations (RTC Section 7203.1, operative 7/1/04); Dedicated to county transportation purposes
7.50%	Total Statewide Rate	

Proposed Law: This bill exempts from the statewide sales and use tax rate described above, and from the various locally-imposed district taxes, a public utility's energy or water efficient home appliance purchase that is provided at no cost to a low-income participant in a federal, state, or ratepayer-funded energy efficiency program for use by that participant in the energy efficiency program.

The bill defines "energy or water efficient home appliance" as an appliance that meets performance requirements under the ENERGY STAR program, established pursuant to Section 6294a of Title 42 of the United States Code, or a similarly labeled refrigerator, dishwasher, washer, dryer, or other appliance with a Tier I equivalent or better energy efficiency rating.

Further, the bill defines "public utility" to mean an entity defined in either Public Utilities Code Section 216 (generally an investor-owned utility, such as PG&E) or 224.3 (generally a municipally-owned utility, such as SMUD).

Also, the bill defines "low-income participant" as any person who is, or who is residing in a home with a person who is, a recipient of Medi-Cal, CalFresh, CalWORKs, Supplemental Security Income, Women, Infant, and Children Nutrition Supplement, Low-Income Home Energy Assistance Program, State Utility Assistance Supplement, or some other state or federal means-tested program or who is able to certify that their gross income, not including any amount of food assistance, is less than 200% of the federal poverty guidelines.

As a tax levy, the bill becomes effective immediately upon enactment.

Background: Last year's AB 816 (Hall), as amended on August 13, 2014, contained provisions similar to this bill. However, the bill was never heard.

In General: ENERGY STAR is the EPA's and the U.S. Department of Energy's joint program to conserve energy and protect the environment through energy efficient products and practices.

The EPA's ENERGY STAR website (http://www.energystar.gov) provides a qualified ENERGY STAR product listing in various product categories, which includes, among many other things, refrigerators, clothes washers, dishwashers, air conditioners, insulation, light bulbs and pool pumps.

In addition to the ENERGY STAR program, the Consortium for Energy Efficiency (CEE) establishes advanced appliance and other product **energy performance** tiers. CEE is a nonprofit organization that, among other things, supports energy efficiency program administrators, such as utility companies. The CEE and ENERGY STAR work together, and in many cases their specifications are the same.

There are three levels of CEE tiers, I, II and III, with the highest number (III) being the best for energy efficiency. The CEE website http://www.cee1.org/content/frequently-asked-questions#qpls outlines the appliances and other property that fall within the Tier system, including residential gas boilers, commercial lighting, gas water heaters, and refrigerators.

The Low Income Home Energy Assistance Program is a United States federal social services program funded annually through Congressional appropriations. Funding is distributed to each of the fifty states, and the program's administration is left up to the state. The program assists eligible low-income households with their heating and cooling energy costs, and weatherizing homes at the state's option.

Commentary:

1. **Effect of the bill.** This bill eliminates the tax associated with a utility company's appliance purchases when those appliances are provided at no cost to low-income participants in a low-income energy assistance program.

2. **The bill should define "Tier 1 equivalent."** The bill makes specific reference to applicable United States Code to define the more commonly understood "ENERGY STAR" program. However, the bill does not define "Tier 1 equivalent." We suggest an appropriate definition be included to eliminate any uncertainty.

3. **Bill should define "home appliance."** Most recognize common household appliances as refrigerators, dishwashers, clothes washers, etc., however, the term can also mean any instrument, apparatus, or device for a particular purpose or use (see Dictionary.com). Many utility companies make no-cost energy improvements to qualified low-income homes that include things like compact fluorescent lights, in-ground pool pumps, attic insulation, and showerheads. It appears that under the broader "appliance" definition, these items could be included within the exemption's scope, since many of these items are qualified ENERGY STAR products. A definition should be added to eliminate any ambiguity and avoid any unanticipated revenue loss.

4. **The bill provides no lead time.** The proposed exemption takes effect immediately, which provides the BOE with no lead time to notify retailers. In order for retailers to properly claim a sales tax exemption under this bill, retailers must accept in good faith an exemption certificate from a utility company that certifies that the utility company's purchase qualifies for the exemption. The bill should provide adequate lead time to allow the BOE to notify and educate retailers of their sales tax responsibilities associated with this new exemption.

Administrative Costs:

The BOE will incur some absorbable administrative costs related to notifying affected retailers, developing and publishing applicable guidelines, and answering inquiries from the general public and affected retailers.

Revenue Impact:

Background, Methodology, and Assumptions. According to the California Public Utilities Commission, preliminary 2014 expenditures for the four large investor-owned utilities (IOU) within the Low Income Energy Savings Assistance Program amount to $230 million. This total reflects expenditures for a broad range of appliances and devices, including clothes washers, refrigerators, microwaves, central air conditioners, evaporative coolers, and compact fluorescent lights, among other items. These expenditures also include exempt installation costs. Staff applied various installation costs percentages to the various cost categories of appliances and devices (subtracting an average of 10% to 50%), and estimated that total appliance purchase costs would amount to $148 million. In addition, staff added two large publicly-owned utilities' (POU) expenditures for total estimated purchase costs of $152 million.

This bill does not define home appliance. Assuming that the author intends to exempt all ENERGY STAR or Tier-rated tangible personal property purchases provided at no cost to low-income participants described in the bill, staff estimates an annual $12.8 million annual state and local sales and use tax revenue loss ($152 million in expenditures x 8.42% average statewide sales and use tax rate).

Summary. The proposed sales and use tax exemption for a public utility's energy and water efficient home appliance purchases that the public utility provides to participants at no cost in an energy efficiency program would result in an estimated annual $12.8 million state and local sales and use tax revenue loss, as follows:

State General Fund	3.9375%	$ 5,985,000
Education Finance	0.25%	$ 380,000
Fiscal Recovery	0.25%	$ 380,000
Local Revenue 2011	1.06%	$ 1,611,200
Local Revenue 1991	0.50%	$ 760,000
Public Safety Fund	0.50%	$ 760,000
Bradley Burns	1.00%	$ 1,520,000
Special Districts	0.92%	$ 1,398,400
Total	8.42%	$12,764,600

Qualifying remarks. The revenue estimate is based on expenditure data of the four major IOUs and two major POUs. At the time of this estimate, data was unavailable for other public utilities' appliance expenditures that may be exempted under this bill's provisions. To that extent, this estimate may be understated.